

**Introduced by Senator Denham**

January 28, 2008

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An act to add Chapter 8.4 (commencing with Section 3800) to Division 2 of, and to repeal Section 3840.5 of, the Business and Professions Code, relating to polysomnographic technologists.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1125, as introduced, Denham. Polysomnographic Technologist Act.

Existing law, the Respiratory Care Practice Act, provides for the licensure and regulation of respiratory professionals by the Respiratory Care Board of California. Existing law defines the practice of respiratory therapy, and prohibits its practice without a license issued by the board, subject to certain exceptions. Under existing law, all licensing fees collected under the Respiratory Care Practice Act are deposited into the Respiratory Care Fund.

This bill would enact the Polysomnographic Technologist Act, which would provide for the licensing and regulation of polysomnographic technologists by the board. The bill would prohibit the unlicensed performance of polysomnography or polysomnography-related respiratory care services, as defined, except as specified. The bill would provide for certain licensing and regulatory fees to be deposited into the fund. The bill would make a violation of the provisions of the act a crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 8.4 (commencing with Section 3800) is added to Division 2 of the Business and Professions Code, to read:

CHAPTER 8.4. POLYSOMNOGRAPHIC TECHNOLOGISTS

Article 1. General Provisions

3800. This chapter shall be known and may be cited as the Polysomnographic Technologist Act.

3802. “Polysomnography” means the process of analysis and attended monitoring and recording of physiologic data during sleep and wakefulness to assist in the assessment and diagnosis of sleep or wake disorders and other disorders, syndromes, and dysfunctions that are sleep related, manifest during sleep, or disrupt normal sleeping and waking cycles and activities.

3802.5. “Polysomnography-related respiratory care services” means the limited practice of respiratory care in the provision of polysomnography services, including all of the following:

- (a) The diagnostic and therapeutic use of oxygen.
- (b) Noninvasive ventilatory assistance of spontaneously breathing patients and cardiopulmonary resuscitation.
- (c) Establishment of baseline oxyhemoglobin saturation.
- (d) Routine fitting of positive airway pressure mask or cannula.
- (e) Maintenance of nasal and oral airways that do not extend into the trachea.
- (f) Continuous observation, analysis, and recordation of carbon dioxide concentrations in respiratory gases, and other respiratory events.
- (g) Validation of respiratory-related data integrity.
- (h) Calibration of respiratory care devices.
- (i) Implementation of appropriate interventions, including actions necessary for patient safety.
- (j) Application of the knowledge and skills necessary to recognize and provide age specific respiratory care in the treatment,

1 assessment, and education of neonatal, pediatric, adolescent, adult,  
2 and geriatric patients.

3 3803. (a) The practice of polysomnography and  
4 polysomnography-related respiratory care services may be  
5 performed in any approved sleep disorder program that includes  
6 a sleep disorder center, or any laboratory, facility, home, or other  
7 area where polysomnography is conducted and that is under the  
8 supervision of a medical director responsible for patient care  
9 provided at that location.

10 (b) The practice of polysomnography and  
11 polysomnography-related respiratory care services shall be  
12 performed under the supervision of a medical director in  
13 accordance with a prescription of a physician and surgeon or  
14 pursuant to polysomnography protocols.

15 (c) “Polysomnography protocols,” as used in this chapter, mean  
16 policies and protocols developed by a California licensed health  
17 facility through collaboration, when appropriate, with  
18 administrators and physicians and surgeons, registered nurses, and  
19 respiratory care practitioners licensed in California, and in  
20 accordance with federal and state laws and regulations.

21 3804. For purposes of this chapter, the following terms have  
22 the following meanings:

23 (a) “Board” means the Respiratory Care Board of California.

24 (b) “Medical director” means a physician and surgeon who is  
25 a member of a health care facility’s active medical staff, who  
26 specializes in sleep medicine, who is knowledgeable in respiratory  
27 care, and who is licensed to practice medicine pursuant to Chapter  
28 5 (commencing with Section 2000).

29 (c) “Polysomnographic technologist” means a person licensed  
30 pursuant to this chapter.

31 (d) “Respiratory care practitioner” means a person licensed  
32 pursuant to Chapter 8.3 (commencing with Section 3700).

33 3804.5. Notwithstanding Chapter 8.3 (commencing with  
34 Section 3700), a person holding a polysomnographic technologist  
35 license issued pursuant to this chapter may perform  
36 polysomnography and polysomnography-related respiratory care  
37 services.

38 3805. Nothing in this chapter shall be construed as authorizing  
39 a polysomnographic technologist to practice medicine, surgery,  
40 or respiratory care, except as authorized by this chapter.

## Article 2. Administration

3810. The board shall enforce and administer this chapter. The board may employ an executive officer exempt from civil service and, subject to the provisions of law relating to civil service, clerical assistants, and, except as provided in Section 159.5, other employees as it may deem necessary to carry out its powers and duties.

3817. (a) The board, or any respiratory care practitioner, licensed polysomnographic technologist, enforcement staff, or investigative unit appointed by the board, may inspect, or require reports from, a general or specialized hospital, any other facility, office, or corporation providing or suspected of providing respiratory care or polysomnography services and the staff thereof, with respect to the care or suspected patient care provided therein, or the employment of staff, and may inspect and copy patient records with respect to care, treatment, services, or facilities. The authority to make inspections and to require reports as provided by this section is subject to the restrictions against disclosure contained in Section 2225. Those persons may also inspect and copy employment records relevant to an official investigation.

(b) The failure of an employer to provide documents as required by this section is punishable by an administrative fine not to exceed fifteen thousand dollars (\$15,000) per violation. This penalty shall be in addition to, and not in lieu of, any other civil or criminal remedies.

3818. The board shall issue, deny, suspend, place probationary terms upon, and revoke licenses to practice polysomnography and polysomnography-related respiratory care services.

3819. A person renewing his or her license shall submit proof satisfactory to the board that, during the preceding two-year period, he or she completed the required number of continuing education hours established by regulation of the board. The required continuing education shall be 15 hours every two years. The board may increase the number of hours by regulation not to exceed 30 hours every two years. Successful completion of an examination approved by the board may be submitted by a licensee for a designated portion of continuing education credit. The board shall determine the hours of credit to be granted for the passage of particular examinations.

1 3819.5. The board may require successful completion of one  
2 or more professional courses offered by the board, the American  
3 Association for Respiratory Care, the California Society for  
4 Respiratory Care, or the National Board for Respiratory Care in  
5 any or all of the following circumstances:

- 6 (a) As part of continuing education.
- 7 (b) Prior to initial licensure.
- 8 (c) Prior to consideration of a reinstatement petition.

9 3822. The board shall adopt any regulations as may be  
10 necessary to effectuate this chapter.

11  
12 Article 3. Licensure of Technologists  
13

14 3830. (a) All licenses for the practice of polysomnography  
15 and polysomnography-related respiratory care services in this state  
16 shall be issued by the board. All applications for those licenses  
17 shall be submitted directly to and filed with the board.

18 (b) Each application shall be accompanied by the application  
19 fee prescribed in Section 3875, shall be signed by the applicant,  
20 and shall contain a statement under oath of the facts. Each applicant  
21 shall furnish a full set of fingerprints for purposes of conducting  
22 criminal history record checks as provided by Section 144. The  
23 application shall contain other information as the board deems  
24 necessary to determine the qualifications of the applicant.

25 3831. A person holding a license as a polysomnographic  
26 technologist issued by the board shall use the title  
27 “polysomnographic technologist” or the letters “PSGT.” The  
28 license shall not authorize the use of the prefix “Dr.,” or the word  
29 “doctor,” or any suffix or affix indicating or implying that the  
30 licensed person is a doctor or a physician and surgeon.

31 The suffix “M.D.” shall not be used unless the licensed  
32 practitioner is licensed as a physician and surgeon in this state.

33 3832. The board shall investigate an applicant for a license,  
34 before a license is issued, in order to determine whether or not the  
35 applicant has the qualifications required by this chapter.  
36 Notwithstanding any other provision, criminal background or  
37 application or complaint investigations shall be completed before  
38 a work permit or license may be issued.

1     3835. Except as otherwise provided in this chapter, no applicant  
2 shall receive a license under this chapter without first successfully  
3 passing an examination approved and prescribed by the board.

4     3836. Examinations for a license as a polysomnographic  
5 technologist may be conducted by the board under a uniform  
6 examination system, and for that purpose the board may make any  
7 arrangements with organizations furnishing examination material  
8 as may in its discretion be desirable.

9     3838. Prior to licensure, each applicant shall be at least 18  
10 years of age and possess a current nationally recognized certificate  
11 in cardiopulmonary resuscitation.

12     3839. (a) Except as otherwise provided in this section, a person  
13 who has filed an application and who meets all the requirements  
14 for licensure, other than those requirements contained in Sections  
15 3835 and 3840, may be issued a work permit by the board to  
16 perform, between the dates specified in the permit, as an applicant  
17 polysomnographic technologist under the direct supervision of a  
18 physician and surgeon licensed pursuant to Chapter 5 (commencing  
19 with Section 2000) or a respiratory care practitioner, provided that  
20 all of the following apply:

21     (1) He or she has not failed an examination required for licensure  
22 pursuant to Section 3835 or has subsequently passed an  
23 examination required for licensure.

24     (2) He or she is employed by a sleep disorder program as  
25 described in Section 3803.

26     (3) The medical director of the sleep disorder program provides  
27 acknowledgment of the director's responsibility to provide direct  
28 supervision, as set forth in subdivision (e), and to provide routine  
29 reports as required by the board.

30     (4) The applicant only identifies himself or herself in this  
31 capacity as an applicant polysomnographic technologist.

32     (5) The applicant provides any and all information requested  
33 by the board in relation to paragraphs (1), (2), (3), and (4).

34     (b) The board may rescind a work permit issued pursuant to this  
35 section if new information is received, or information requested  
36 by the board is not received, that affects the status of the application  
37 for licensure or the board's ability to verify requirements.

38     (c) No applicant for a polysomnographic technologist license  
39 shall be authorized to perform as an applicant polysomnographic

1 technologist if cause exists to deny his or her application for  
2 licensure.

3 (d) An applicant polysomnographic technologist may, while  
4 under the direct supervision described in subdivision (a), perform  
5 those diagnostic and therapeutic procedures defined as  
6 “polysomnography” and “polysomnography-related respiratory  
7 care services,” except that under no circumstances may an applicant  
8 polysomnographic technologist make any type of independent  
9 assessment.

10 (e) “Under the direct supervision” means that a person is  
11 assigned to a physician and surgeon licensed pursuant to Chapter  
12 5 (commencing with Section 2000) or a respiratory care practitioner  
13 who is on duty and immediately available, within five minutes, in  
14 the assigned patient care area.

15 (f) A work permit issued pursuant to this section may be issued  
16 for an initial term not to exceed six months, and may be extended  
17 in one-year increments not to exceed two and one-half years from  
18 the start date of the initial issuance of the work permit. An  
19 extension shall only be issued upon the request of the applicant  
20 and after all of the following have been provided to the board’s  
21 satisfaction:

22 (1) Verification of current certification in cardiopulmonary  
23 resuscitation.

24 (2) Verification of current employer and medical director and  
25 their contact information.

26 (3) A recent acknowledgment form completed by the applicant  
27 and the medical director responsible for the direct supervision and  
28 verification of paid work experience of the applicant.

29 (4) A written statement signed under oath as to whether the  
30 applicant has been arrested or convicted for any crime in the past  
31 18 months and details of the incident as requested by the board.

32 (g) An applicant polysomnographic technologist shall report to  
33 the board within 10 days of a change in employer or medical  
34 director taking responsibility for direct supervision and verification  
35 of his or her paid work experience.

36  
37 Article 4. Education Standards  
38

39 3840. Prior to licensure, an applicant for licensure under this  
40 chapter shall meet all of the following requirements:

1 (a) Fulfill one of the following criteria as further prescribed by  
2 the board by regulation:

3 (1) He or she possesses a current license to practice respiratory  
4 care in California.

5 (2) He or she completed an accredited respiratory care program  
6 and has an associate degree or a higher level degree.

7 (3) He or she has completed an accredited  
8 electroneurodiagnostics program and has an associate degree or  
9 higher level degree.

10 (4) He or she has completed an accredited polysomnography  
11 education program and has an associate degree or higher level  
12 degree.

13 (5) He or she has completed 18 months or 3,000 hours of  
14 full-time, paid work experience as an applicant polysomnographic  
15 technologist, including 1000 hours in polysomnography-related  
16 respiratory care services, and satisfactorily performed all hours as  
17 verified by the medical director and supported by official personnel  
18 records.

19 (b) Complete any other educational courses, clinical practice,  
20 or work experience identified by the board through regulation.

21 (c) Provide documentation to the satisfaction of the board of  
22 meeting the above requirements.

23 3840.5. (a) Any person who applies for a license pursuant to  
24 this chapter before January 1, 2010, may use paid work experience  
25 earned in the two years preceding January 1, 2010, to meet, either  
26 partially or fully, the work experience requirement in paragraph  
27 (5) of subdivision (a) of Section 3840 without having held a work  
28 permit as an applicant polysomnographic technologist.

29 (b) Paid work experience described in this section must be  
30 satisfactorily performed as verified by a physician and surgeon  
31 licensed pursuant to Chapter 5 (commencing with Section 2000)  
32 and supported by official personnel records, including duty  
33 statements, performance reviews or appraisals, salary and shift  
34 information and any other documentation as required by the board.

35 (c) This section shall remain in effect only until January 1, 2010,  
36 and as of that date is repealed, unless a later enacted statute that  
37 is enacted before January 1, 2010, deletes or extends that date.

38 3841. During the period of any clinical training,  
39 polysomnography or polysomnography-related respiratory care  
40 services may be rendered by a student enrolled in an approved

1 education program if these services are incidental to his or her  
2 course of study and he or she acquires and maintains a current  
3 nationally recognized certificate in cardiopulmonary resuscitation.  
4 Under no circumstances may a student make any type of  
5 independent assessment. A student shall be identified only as a  
6 student polysomnographic technologist.

7 3842. During the period of clinical training, a student  
8 polysomnographic technologist shall be assigned to, and under the  
9 direct supervision of, a physician and surgeon licensed pursuant  
10 to Chapter 5 (commencing with Section 2000) or a respiratory care  
11 practitioner who is on duty and immediately available, within five  
12 minutes, in the assigned patient care area.

13 3843. Applications may be considered null and void after 12  
14 months of inactivity or failure to progress toward meeting licensure  
15 requirements.

16  
17 Article 5. Application and License Discipline  
18

19 3850. The board may order the denial, suspension, or revocation  
20 of, or the imposition of probationary conditions upon, a license  
21 issued under this chapter, for any of the following causes:

- 22 (a) Advertising in violation of Section 651 or Section 17500.  
23 (b) Fraud in the procurement of any license under this chapter.  
24 (c) Knowingly employing unlicensed persons to perform  
25 polysomnography or polysomnography-related respiratory care  
26 services.  
27 (d) Conviction of a crime that substantially relates to the  
28 qualifications, functions, or duties of a polysomnographic  
29 technologist. The record of conviction or a certified copy of the  
30 record shall be conclusive evidence of the conviction.  
31 (e) Impersonating or acting as a proxy for an applicant in any  
32 examination given under this chapter.  
33 (f) Negligence in his or her practice of polysomnography or  
34 polysomnography-related respiratory care services.  
35 (g) Conviction of a violation of any of the provisions of this  
36 chapter or of any provision of Division 2 (commencing with  
37 Section 500), or violating, or attempting to violate, directly or  
38 indirectly, or assisting in or abetting the violation of, or conspiring  
39 to violate any provision or term of, this chapter or of any provision  
40 of Division 2 (commencing with Section 500).

1 (h) Aiding or abetting any person to violate this chapter or any  
2 regulations duly adopted under this chapter.

3 (i) Aiding or abetting any person to engage in the unlawful  
4 practice of polysomnography or polysomnography-related  
5 respiratory care services.

6 (j) Commission of any fraudulent, dishonest, or corrupt act that  
7 is related to the qualifications, functions, or duties of a  
8 polysomnographic technologist.

9 (k) Falsifying, or making grossly incorrect, grossly inconsistent,  
10 or unintelligible entries in any patient, hospital, or other record.

11 (l) Changing the prescription of a physician and surgeon, or  
12 falsifying verbal or written orders for treatment or a diagnostic  
13 regime received, whether or not that action resulted in actual patient  
14 harm.

15 (m) Denial, suspension, or revocation of any license to practice  
16 by another agency, state, or territory of the United States for any  
17 act or omission that would constitute grounds for the denial,  
18 suspension, or revocation of a license in this state.

19 (n) Except for good cause, the knowing failure to protect patients  
20 by failing to follow infection control guidelines of the board,  
21 thereby risking transmission of blood-borne infectious diseases  
22 from licensee to patient, from patient to patient, and from patient  
23 to licensee. In administering this subdivision, the board shall  
24 consider referencing the standards, regulations, and guidelines of  
25 the State Department of Public Health developed pursuant to  
26 Section 1250.11 of the Health and Safety Code and the standards,  
27 regulations, and guidelines pursuant to the California Occupational  
28 Safety and Health Act of 1973 (Part 1 (commencing with Section  
29 6300) of Division 5 of the Labor Code) for preventing the  
30 transmission of HIV, hepatitis B, and other blood-borne pathogens  
31 in health care settings. The board shall seek to ensure that licensees  
32 are informed of the responsibility of licensees and others to follow  
33 infection control guidelines, and of the most recent scientifically  
34 recognized safeguards for minimizing the risk of transmission of  
35 blood-borne infectious diseases.

36 (o) Incompetence in his or her practice as a polysomnographic  
37 technologist.

38 (p) A pattern of substandard care.

1 3850.5. In addition to any other grounds specified in this  
2 chapter, the board may deny, suspend, or revoke the license of any  
3 applicant or licenseholder who has done any of the following:

4 (a) Obtained, possessed, or used in violation of law, or except  
5 as directed by a licensed physician and surgeon, dentist, or  
6 podiatrist administered to himself or herself, or furnished or  
7 administered to another, any controlled substance as defined in  
8 Division 10 (commencing with Section 11000) of the Health and  
9 Safety Code, or any dangerous drug as defined in Article 2  
10 (commencing with Section 4015) of Chapter 9.

11 (b) Used any controlled substance as defined in Division 10  
12 (commencing with Section 11000) of the Health and Safety Code,  
13 or any dangerous drug as defined in Article 2 (commencing with  
14 Section 4015) of Chapter 9 or alcoholic beverages, to an extent or  
15 in a manner dangerous or injurious to himself or herself, another  
16 person, or the public or to the extent that the use impaired his or  
17 her ability to conduct with absolute safety to the public the practice  
18 authorized by his or her license.

19 (c) Applied for employment or worked in any health care  
20 profession or environment while under the influence of alcohol.

21 (d) Been convicted of a criminal offense involving the  
22 consumption or self-administration of any of the substances  
23 described in subdivisions (a) and (b), or the possession of, or  
24 falsification of a record pertaining to, the substances described in  
25 subdivision (a), in which event the record of the conviction is  
26 conclusive evidence thereof.

27 (e) Been committed or confined by a court of competent  
28 jurisdiction for intemperate use of or addiction to the use of any  
29 of the substances described in subdivisions (a), (b), and (c), in  
30 which event the court order of commitment or confinement is  
31 prima facie evidence of that commitment or confinement.

32 (f) Falsified, or made grossly incorrect, grossly inconsistent, or  
33 unintelligible entries in any hospital, patient, or other record  
34 pertaining to the substances described in subdivision (a).

35 3850.6. Upon request, every holder of a pocket license shall  
36 produce for inspection the original pocket license issued by the  
37 board. A facsimile of the license is not sufficient for that purpose.  
38 Upon request, every applicant issued a work permit shall produce  
39 for inspection the original permit issued by the board. A facsimile  
40 of the work permit is not sufficient for that purpose.

1     3851. A person whose license has been revoked, surrendered,  
2 or suspended, or placed on probation, may petition the board for  
3 reinstatement, modification, or termination of probation as provided  
4 in Section 3751.

5     3852. A plea or verdict of guilty or a conviction following a  
6 plea of nolo contendere made to a charge of any offense that  
7 substantially relates to the qualifications, functions, or duties of a  
8 polysomnographic technologist is deemed to be a conviction within  
9 the meaning of this article. The board shall order the license  
10 suspended or revoked, or may decline to issue a license, when the  
11 time for appeal has elapsed, or the judgment of conviction has  
12 been affirmed on appeal or when an order granting probation is  
13 made suspending the imposition of sentence, irrespective of a  
14 subsequent order under Section 1203.4 of the Penal Code allowing  
15 the person to withdraw his or her plea of guilty and to enter a plea  
16 of not guilty, or setting aside the verdict of guilty, or dismissing  
17 the accusation, information, or indictment.

18     3852.5. For purposes of Division 1.5 (commencing with Section  
19 475), and this chapter, a crime involving bodily injury or attempted  
20 bodily injury shall be considered a crime substantially related to  
21 the qualifications, functions, or duties of a polysomnographic  
22 technologist.

23     3852.6. For purposes of Division 1.5 (commencing with Section  
24 475), and this chapter, a crime involving sexual misconduct or  
25 attempted sexual misconduct, whether or not with a patient, shall  
26 be considered a crime substantially related to the qualifications,  
27 functions, or duties of a polysomnographic technologist.

28     3852.7. Notwithstanding Section 3850, any proposed decision  
29 or decision issued under this chapter in accordance with the  
30 procedures set forth in Chapter 5 (commencing with Section 11500)  
31 of Part 1 of Division 3 of Title 2 of the Government Code, that  
32 contains any finding of fact that a licensee or applicant engaged  
33 in any act of sexual contact, as defined in Section 729, with a  
34 patient, or has committed an act or been convicted of a sex offense  
35 as defined in Section 44010 of the Education Code, shall contain  
36 an order of revocation. The revocation shall not be stayed by the  
37 administrative law judge. For purposes of this section, the patient  
38 shall no longer be considered a patient of the polysomnographic  
39 technologist when the order for polysomnography and  
40 polysomnography-related respiratory care services is terminated,

1 discontinued, or not renewed by the prescribing physician and  
2 surgeon.

3 3852.8. (a) Notwithstanding the Administrative Procedures  
4 Act (Chapter 5 (commencing with Section 11500) of Part 1 of  
5 Division 3 of Title 2 of the Government Code), the board may  
6 suspend without a hearing the license of a polysomnographic  
7 technologist for up to 60 days upon receipt of a certified arrest  
8 report or certified court record that alleges the licensee committed  
9 or was convicted of a sex offense, as defined in Section 729 of this  
10 code or Section 44010 of the Education Code.

11 (b) Notice of the suspension shall be delivered or mailed  
12 overnight to the respondent's address of record and shall go into  
13 effect either immediately upon confirmed delivery or one day  
14 following the date the notice was mailed, whichever occurs first.

15 (c) At any time during the suspension period, the licensee may  
16 present a written appeal to the board with documentation providing  
17 either of the following:

18 (1) He or she is not the individual who was arrested.

19 (2) He or she has not been arrested for a sex offense as defined  
20 in subdivision (a).

21 (d) After receiving the appeal and any supporting  
22 documentation, the board shall review the appeal and notify the  
23 licensee of its decision within five working days.

24 (e) Should the board determine at any time during the 60-day  
25 suspension period that paragraph (1) or (2) of subdivision (c) is  
26 accurate, the board shall immediately withdraw the order of  
27 suspension.

28 (f) A suspension order that is issued pursuant to this section is  
29 a public record. However, if a notice of suspension is withdrawn  
30 pursuant to subdivision (d) or (e), the notice of suspension shall  
31 not be disclosed to the public after the date of the withdrawal.

32 (g) Nothing in this section shall in any way limit the board's  
33 authority or ability to institute disciplinary proceedings pursuant  
34 to this article.

35 3853. Except as otherwise provided in Section 3852.8, the  
36 procedure in all matters and proceedings relating to the denial,  
37 suspension, or revocation of licenses under this chapter shall be  
38 governed by the provisions of the Administrative Procedure Act  
39 (Chapter 5 (commencing with Section 11500) of Part 1 of Division  
40 3 of Title 2 of the Government Code).

1 3853.1. (a) An administrative disciplinary decision imposing  
2 terms of probation may include, among other things, a requirement  
3 that the licensee-probationer pay the monetary costs associated  
4 with monitoring the probation.

5 (b) The board shall not renew or reinstate the license of any  
6 licensee who has failed to pay all of the costs ordered under this  
7 section once a licensee has served his or her term of probation.

8 3853.5. (a) In any order issued in resolution of a disciplinary  
9 proceeding before the board, the board or the administrative law  
10 judge may direct any licensee or applicant found to have committed  
11 a violation or violations of law or probationary terms to pay to the  
12 board a sum not to exceed the costs of the investigation and  
13 prosecution of the case. A certified copy of the actual costs, or a  
14 good faith estimate of costs where actual costs are not available,  
15 signed by the official custodian of the record or his or her  
16 designated representative shall be prima facie evidence of the  
17 actual costs of the investigation and prosecution of the case.

18 (b) The costs shall be assessed by the administrative law judge  
19 and shall not be increased by the board. However, the costs may  
20 be imposed or increased by the board if it does not adopt the  
21 proposed decision of the case. If an order for recovery of costs is  
22 made and timely payment is not made as directed in the board's  
23 decision, the board may enforce the order for repayment in any  
24 appropriate court. This right of enforcement shall be in addition  
25 to any other rights the board may have as to any licensee or  
26 applicant directed to pay costs.

27 (c) In any action for recovery of costs, proof of the board's  
28 decision shall be conclusive proof of the validity of the order of  
29 payment and the terms for payment.

30 (d) (1) The board shall not renew or reinstate the license of any  
31 licensee who has failed to pay all of the costs ordered under this  
32 section.

33 (2) Notwithstanding paragraph (1), the board may, in its  
34 discretion, conditionally renew, for a maximum of one year, the  
35 license of any licensee who demonstrates financial hardship,  
36 through documentation satisfactory to the board, and who enters  
37 into a formal agreement with the board to reimburse the board  
38 within that one-year period for those unpaid costs.

1 3853.7. For purposes of this chapter, costs of prosecution shall  
2 include attorney general or other prosecuting attorney fees, expert  
3 witness fees, and other administrative, filing, and service fees.

4 3854. The board may deny an application for, or issue with  
5 terms and conditions, or suspend or revoke, or impose probationary  
6 conditions upon, a license in any decision made after a hearing,  
7 as provided in Section 3853.

8 3854.5. The board shall initiate action against any licensee  
9 who obtains a license by fraud or misrepresentation. The board  
10 shall take action against any licensee whose license was issued by  
11 mistake.

12 3855. The board may take action against any polysomnographic  
13 technologist who is charged with unprofessional conduct in  
14 administering, or attempting to administer, direct or indirect  
15 polysomnography or polysomnography-related respiratory care  
16 services. Unprofessional conduct includes, but is not limited to,  
17 repeated acts of clearly administering directly or indirectly  
18 inappropriate or unsafe polysomnography or  
19 polysomnography-related procedures, protocols, therapeutic  
20 regimens, or diagnostic testing or monitoring techniques, and  
21 violation of any provision of Section 3850. The board may  
22 determine unprofessional conduct involving any and all aspects  
23 of polysomnography or polysomnography-related respiratory care  
24 services performed by anyone licensed as a polysomnographic  
25 technologist. Any person who engages in repeated acts of  
26 unprofessional conduct shall be guilty of a misdemeanor and shall  
27 be punished by a fine of not more than one thousand dollars  
28 (\$1,000), or by imprisonment for a term not to exceed six months,  
29 or by both that fine and imprisonment.

30 3856. (a) A polysomnographic technologist who provides  
31 polysomnography or polysomnography-related respiratory care  
32 services may be ordered to undergo a professional competency  
33 examination approved by the board if, after investigation and  
34 review by one or more polysomnography technologist and  
35 respiratory care practitioner consultants of the board, there is  
36 reasonable cause to believe that the person providing  
37 polysomnography or polysomnography-related respiratory care  
38 services is unable or unwilling to practice polysomnography or  
39 polysomnography-related respiratory care services with reasonable  
40 skill and patient safety. Reasonable cause shall be determined by

1 the board and may include, but shall not be limited to, the  
2 following:

3 (1) Negligence.

4 (2) A pattern of inappropriate direct or indirect administration  
5 of polysomnography or polysomnography-related respiratory care  
6 services protocols, procedures, therapeutic regimens, or diagnostic  
7 testing of monitoring techniques.

8 (3) An act of incompetence or negligence causing death or  
9 serious bodily injury.

10 (4) A pattern of substandard care.

11 (5) Violation of any provision of this chapter.

12 (b) The matter shall be presented by the board's executive officer  
13 or designee by way of a written petition detailing the reasonable  
14 cause. The petition shall contain all conclusions and facts upon  
15 which the presumption of reasonable cause is based. A copy of  
16 the petition shall be served on the person who shall have 45 days  
17 after receipt of the copy of the petition to file written opposition  
18 to the petition. Service of the petition and any order shall be in  
19 accordance with the methods of service authorized by subdivision  
20 (c) of Section 11505 of the Government Code.

21 (c) The board shall review the petition and any written  
22 opposition from the person who has charges brought against him  
23 or her, or the board may hold a hearing in accordance with the  
24 Administrative Procedures Act (Chapter 5 (commencing with  
25 Section 11500) of Part 1 of Division 3 of Title 2 of the Government  
26 Code) to determine if reasonable cause exists, as specified in  
27 subdivision (a). The person who has charges brought against him  
28 or her shall have the right to be represented at that hearing by a  
29 person of his or her choice. If the board is satisfied that reasonable  
30 cause exists that is considered by the board as unprofessional  
31 conduct, the board shall issue an order compelling the person who  
32 has charges brought against him or her to undergo an examination  
33 of professional competency, as measured by community standards.  
34 For purposes of this section, "community standards" means the  
35 statewide standards of the community of licensees. Failure to  
36 comply with the order duly served on the person charged shall  
37 constitute unprofessional conduct for purposes of disciplinary  
38 proceedings and failure to pass the examination shall result in  
39 denial, suspension, or revocation of the license, which shall be  
40 determined by the board in its discretion.

1 (d) If the board proceeds pursuant to Sections 3855 and 3856,  
2 and the person charged passes the professional competency  
3 examination administered, the board shall be precluded from filing  
4 an accusation of incompetency based solely on the circumstances  
5 giving rise to the reasonable cause for the examination.

6 (e) If the board determines there is insufficient cause to file an  
7 accusation based on the examination results, then all agency records  
8 of the proceedings, including the petition and order for the  
9 examination, investigative reports, if any, reports of staff or the  
10 board's consultants, and the reports of the examiners, shall be kept  
11 confidential and shall not be subject to discovery or subpoena.

12 3857. The board may refuse to issue a license or an applicant  
13 work permit whenever it appears that the applicant may be unable  
14 to practice his or her profession safely due to mental illness or  
15 chemical dependency. The procedures set forth in Section 820  
16 shall apply to any denial of a license or work permit pursuant to  
17 this section.

18 3858. (a) Any employer of a polysomnographic technologist  
19 shall report to the board the suspension or termination for cause  
20 of any technologist in their employ. The reporting required herein  
21 shall not act as a waiver of confidentiality of medical records. The  
22 information reported or disclosed shall be kept confidential except  
23 as provided in subdivision (c) of Section 800, and shall not be  
24 subject to discovery in civil cases.

25 (b) For purposes of the section, "suspension or termination for  
26 cause" is defined to mean suspension or termination from  
27 employment for any of the following reasons:

28 (1) Use of controlled substances or alcohol to an extent that it  
29 impairs the ability to safely practice polysomnography and  
30 polysomnography-related respiratory care services.

31 (2) Unlawful sale of controlled substances or other prescription  
32 items.

33 (3) Patient neglect, physical harm to a patient, or sexual contact  
34 with a patient.

35 (4) Falsification of medical records.

36 (5) Gross incompetence or negligence.

37 (6) Theft from patients, other employees, or the employer.

38 (c) Failure of an employer to make a report required by this  
39 section is punishable by an administrative fine not to exceed fifteen  
40 thousand dollars (\$15,000) per violation.

1 3858.5. If a licensee has knowledge that another person may  
2 be in violation of, or has violated, any of the statutes or regulations  
3 administered by the board, the licensee shall report this information  
4 to the board in writing and shall cooperate with the board in  
5 furnishing information or assistance as may be required.

6 3858.6. (a) In addition to the reporting required under Section  
7 3858, an employer shall also report to the board the name,  
8 professional licensure type and number, and title of the person  
9 supervising the licensee who has been suspended or terminated  
10 for cause, as defined in subdivision (b) of Section 3858. If the  
11 supervisor is a licensee under this chapter, the board shall  
12 investigate whether due care was exercised by that supervisor in  
13 accordance with this chapter. If the supervisor is a health  
14 professional, licensed by another licensing board under this  
15 division, the employer shall report the name of that supervisor and  
16 any and all information pertaining to the suspension or termination  
17 for cause of the person licensed under this chapter to the  
18 appropriate licensing board.

19 (b) The failure of an employer to make a report required by this  
20 section is punishable by an administrative fine not to exceed fifteen  
21 thousand dollars (\$15,000) per violation.

22 3859. Pursuant to Section 43.8 of the Civil Code, no person  
23 shall incur any civil penalty as a result of making any report  
24 required by this chapter.  
25

## 26 Article 6. Offenses and Enforcement

27

28 3860. (a) No person may practice polysomnography and  
29 polysomnography-related respiratory care services or represent  
30 himself or herself to be a polysomnographic technologist in this  
31 state, without a valid license granted under this chapter, except as  
32 otherwise provided in this chapter.

33 (b) For purposes of this section, engaging in the practice of  
34 polysomnography and polysomnography-related respiratory care  
35 services includes, but is not limited to, representations by a person,  
36 whether through verbal claim, sign, advertisement, letterhead,  
37 business card, or other representation that he or she is able to  
38 perform any polysomnography and polysomnography-related  
39 respiratory care services, or performance of any  
40 polysomnography-related respiratory care services.

1 (c) A person who is unlicensed, whose polysomnographic  
2 technologist license has been revoked or suspended, or whose  
3 license is not valid shall not engage in the practice of  
4 polysomnography and polysomnography-related respiratory care  
5 services, even though the person may continue to hold a certificate  
6 or registration issued by a private certifying entity.

7 (d) Except as otherwise provided in this chapter, a person shall  
8 not represent himself or herself to be a polysomnographic  
9 technologist, or a polysomnographic equipment technician or a  
10 polysomnographic technician or use the abbreviation or letters  
11 “PSGT” or use any modifications or derivatives of those titles,  
12 abbreviations, or letters without a current and valid license issued  
13 under this chapter.

14 (e) A person shall not begin practice as an applicant  
15 polysomnographic technologist until he or she meets the applicable  
16 requirements of this chapter and obtains a valid work permit.

17 (f) A person, company, organization, or corporation shall not  
18 knowingly employ or contract with a person who holds himself  
19 or herself out to be a polysomnographic technologist without a  
20 valid license granted under this chapter, except as otherwise  
21 provided in this chapter.

22 3862. Nothing in this chapter is intended to limit, preclude, or  
23 otherwise interfere with the practice of a physician and surgeon  
24 licensed pursuant to Chapter 5 (commencing with Section 2000),  
25 a registered nurse licensed pursuant to Chapter 6 (commencing  
26 with Section 2700), or a respiratory care practitioner, in carrying  
27 out authorized and customary duties and functions.

28 3863. Any person who violates any of the provisions of this  
29 chapter shall be guilty of a misdemeanor punishable by a fine not  
30 exceeding one thousand dollars (\$1,000) or imprisonment in a  
31 county jail not exceeding six months, or both, for each offense.

32 3864. Whenever any person has engaged or is about to engage  
33 in any acts or practices that constitute or will constitute an offense  
34 against this chapter, the superior court of any county, on application  
35 of the board, the Medical Board of California, or by 10 or more  
36 persons holding respiratory care practitioner licenses or  
37 polysomnographic technologist licenses issued under this chapter,  
38 may issue an injunction or other appropriate order restraining that  
39 conduct. Proceedings under this section shall be governed by  
40 Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of

1 the Code of Civil Procedure, except that no undertaking shall be  
2 required in any action commenced by the board.

3 3865. This chapter does not prohibit any of the following  
4 activities:

5 (a) The performance of polysomnography and  
6 polysomnography-related respiratory care services by a respiratory  
7 care practitioner.

8 (b) Self-care by a patient or the gratuitous care by a friend or  
9 member of the family of the patient who does not represent or hold  
10 himself or herself to be a polysomnographic technologist.

11 (c) The performance by a respiratory care practitioner or  
12 polysomnographic technologist of advances in the art and  
13 techniques of polysomnography and polysomnography-related  
14 respiratory care services learned through formal or specialized  
15 training.

16 (d) The performance by a person employed by a home medical  
17 device retail facility or by a home health agency licensed by the  
18 State Department of Public Health of specific, limited, and basic  
19 polysomnography and polysomnography-related respiratory care  
20 services as may be identified as “specific, limited, and basic  
21 respiratory care or respiratory care related services” authorized by  
22 the board pursuant to subdivision (h) of Section 3765.

23 3866. (a) The board may issue a citation containing an order  
24 of abatement and civil penalties against a person who acts in the  
25 capacity of, or engages in the business of, a polysomnographic  
26 technologist in this state without having a license in good standing  
27 issued pursuant to this chapter.

28 (b) The board may issue a citation containing an order of  
29 abatement and civil penalties against a person employing or  
30 contracting with a person who acts in the capacity of, or engages  
31 in the business of, a polysomnographic technologist in this state  
32 without having a license in good standing issued pursuant to this  
33 chapter.

34 3867. (a) The board shall issue a citation to a person and to  
35 his or her employer or contractor, if, upon inspection or  
36 investigation, either upon complaint or otherwise, the following  
37 conditions are met:

38 (1) The board has probable cause to believe that the person is  
39 acting in the capacity of, or engaging in the practice of, a

1 polysomnographic technologist in this state without having a  
2 license in good standing issued pursuant to this chapter.

3 (2) The person is not otherwise exempted from the provisions  
4 of this chapter.

5 (b) Each citation issued pursuant to subdivision (a) shall meet  
6 all of the following requirements:

7 (1) Be in writing and describe with particularity the basis of the  
8 citation.

9 (2) Contain an order of abatement and an assessment of a civil  
10 penalty in an amount not less than two hundred dollars (\$200) or  
11 more than fifteen thousand dollars (\$15,000).

12 (c) A person served with a citation may appeal to the board  
13 within 15 calendar days after service of the citation with respect  
14 to any of the following:

15 (1) The violations alleged.

16 (2) The scope of the order of abatement.

17 (3) The amount of the civil penalty assessed.

18 (d) If, within 15 calendar days after service of the citation, the  
19 person cited fails to notify the board that he or she intends to appeal  
20 the citation, the citation shall be deemed a final order of the board  
21 and not subject to review by any court or agency. The board may  
22 extend the 15-day period for good cause.

23 (e) (1) If a person cited under this section notifies the board in  
24 a timely manner that he or she intends to contest the citation, the  
25 board shall afford an opportunity for a hearing.

26 (2) The board shall thereafter issue a decision, based on findings  
27 of fact, affirming, modifying, or vacating the citation, or directing  
28 other appropriate relief.

29 (f) With the approval of the board, the executive officer shall  
30 prescribe procedures for the issuance and appeal of a citation and  
31 procedures for a hearing under this section. The board shall adopt  
32 regulations covering the assessment of a civil penalty that shall  
33 give due consideration to the gravity of the violation and any  
34 history of previous violations.

35 (g) The sanctions authorized under this section shall be separate  
36 from, and in addition to, any other civil or criminal remedies.

37 3868. (a) After the exhaustion of the review procedures  
38 provided for in Section 3867, and as adopted by regulation, the  
39 board may apply to the appropriate superior court for both of the  
40 following:

1 (1) A judgment in the amount of the civil penalty.

2 (2) An order compelling the cited person to comply with the  
3 order of abatement.

4 (b) The application described in subdivision (a) shall include a  
5 certified copy of the final order of the board.

6 (c) The application described in subdivision (a) shall constitute  
7 a sufficient showing to warrant the issuance of the judgment and  
8 order.

9 (d) The board may employ collection agencies or other methods  
10 in order to collect civil penalties.

11 3869.3. (a) Notwithstanding any other provision, the board  
12 may, by stipulation with the affected licensee, issue a public  
13 reprimand, after it has conducted an investigation, in lieu of filing  
14 or prosecuting a formal accusation.

15 (b) The stipulation shall contain the authority, grounds, and  
16 causes and circumstances for taking that action and by way of  
17 waiving the affected licensee's rights, inform the licensee of his  
18 or her rights to have a formal accusation filed and stipulate to a  
19 settlement thereafter or have the matter in the statement of issues  
20 heard before an administrative law judge in accordance with the  
21 Administrative Procedures Act (Chapter 5 (commencing with  
22 Section 11500) of Part 1 of Division 3 of Title 2 of the Government  
23 Code).

24 (c) The stipulation shall be public information and shall be used  
25 as evidence in any future disciplinary or penalty action taken by  
26 the board.

## 27 Article 7. Fiscal Administration

28  
29  
30 3870. The department shall keep a record of its proceedings  
31 under this chapter, and a register of all persons licensed under it.  
32 The register shall show the name of every living licensed  
33 polysomnographic technologist, his or her last known place of  
34 residence, or address of record, and the date and number of his or  
35 her license as a polysomnographic technologist. Any interested  
36 person is entitled to obtain a copy of that list upon application to  
37 the department and payment of an amount as may be fixed by the  
38 department, which amount shall not exceed the cost of the list so  
39 furnished.

1     3871. Within 10 days after the beginning of each calendar  
2 month, the board shall report to the Controller the amount and  
3 source of all collections made from persons licensed or seeking to  
4 be licensed under this chapter, and all fines and forfeitures to which  
5 the board is entitled, and at the same time, pay all these sums into  
6 the State Treasury, where they shall be credited to the Respiratory  
7 Care Fund, to carry out the purposes of this chapter.

8     3872. All collections from persons licensed or seeking to be  
9 licensed under this chapter shall be paid by the board into the fund  
10 after the report to the Controller at the beginning of each month  
11 of the amount and source of the collections.

12     3873. At the time of application for renewal of a  
13 polysomnographic technologist license, the licensee shall notify  
14 the board of all of the following:

15     (a) Whether he or she has been arrested or convicted of any  
16 crime subsequent to the licensee's previous renewal and the details  
17 of that arrest or conviction as requested by the board.

18     (b) The name and address of the licensee's current employer or  
19 employers.

20     (c) Whether he or she has maintained a current nationally  
21 recognized certificate for cardiopulmonary resuscitation and the  
22 current expiration date of the certification.

23     3874. On or before the birthday of a licensee in every other  
24 year, following the initial licensure, the board shall mail to the  
25 licensee, at the latest address furnished by the licensee, a notice  
26 stating the amount of the renewal fee and the date on which it is  
27 due. The notice shall state that failure to pay the renewal fee on  
28 or before the due date and submit evidence of compliance with  
29 Sections 3819 and 3873 shall result in expiration of the license.  
30 Each license not renewed in accordance with this section shall  
31 expire but may within a period of three years thereafter be  
32 reinstated upon payment of all accrued and unpaid renewal fees  
33 and penalty fees required by this chapter. The board may also  
34 require submission of proof of the applicant's qualifications, except  
35 that during the three-year period no examination shall be required  
36 as a condition for the reinstatement of any expired license that has  
37 lapsed solely by reason of nonpayment of the renewal fee.

38     3875. The fees applicable to this chapter shall be as follows:

- 1 (a) The application fee shall be two hundred fifty dollars (\$250).  
2 The board may increase this fee, by regulation, to an amount not  
3 to exceed five hundred dollars (\$500).
- 4 (b) The initial work permit fee shall be one hundred dollars  
5 (\$100). The board may increase this fee, by regulation, to an  
6 amount not to exceed two hundred dollars (\$200).
- 7 (c) An extended work permit fee shall be two hundred dollars  
8 (\$200). The board may increase this fee, by regulation, to an  
9 amount not to exceed four hundred dollars (\$400).
- 10 (d) The licensing fee shall be two hundred dollars (\$200) and  
11 may be prorated at the board's discretion. The board may increase  
12 this fee, by regulation, to an amount not to exceed four hundred  
13 dollars (\$400).
- 14 (e) The fee for any examination or reexamination required by  
15 the board shall be the actual cost to the board for developing,  
16 purchasing, grading, and administering each examination or  
17 reexamination.
- 18 (f) The license renewal fee shall be four hundred dollars (\$400).  
19 The board may increase this fee, by regulation, to an amount not  
20 to exceed six hundred dollars (\$600).
- 21 (g) Delinquency fees shall be in the following amounts:
- 22 (1) If the license is renewed not more than two years from the  
23 date of its expiration, the delinquency fee shall be 50 percent of  
24 the renewal fee in effect at the time of renewal.
- 25 (2) If the license is renewed after two years, but not more than  
26 three years, from the date of expiration of the license, the  
27 delinquency fee shall be 100 percent of the renewal fee in effect  
28 at the time of renewal.
- 29 (h) The duplicate license fee shall be twenty-five dollars (\$25).  
30 The board may increase this fee, by regulation, to an amount not  
31 to exceed one hundred dollars (\$100).
- 32 (i) The endorsement fee shall be seventy-five dollars (\$75). The  
33 board may increase this fee, by regulation, to an amount not to  
34 exceed one hundred fifty dollars (\$150).
- 35 (j) Costs incurred by the board in order to obtain and review  
36 documents or information related to the past and present  
37 employment of, criminal history of, rehabilitation of, disciplinary  
38 actions taken by another state agency against, or acts of negligence  
39 in the practice of polysomnography and polysomnography-related  
40 respiratory care services by, an applicant, petitioner, or licensee,

1 shall be paid by the applicant petitioner, or licensee before a license  
2 will be issued or reinstated or a subsequent renewal is processed.

3 (k) Fees paid in any form other than check, money order, or  
4 cashier's check shall be subject to an additional processing charge  
5 equal to the board's actual processing costs.

6 (l) Fees incurred by the board to process return mail shall be  
7 paid by the applicant or licensee for whom the charges were  
8 incurred.

9 (m) Notwithstanding any other provision of this chapter, the  
10 board, in its discretion, may reduce the amount of any fee otherwise  
11 prescribed by this section.

12 3875.5. The fee for an inactive license shall be the same as the  
13 renewal fee for the practice of polysomnography and  
14 polysomnography-related respiratory care services as specified in  
15 Section 3875.

16 3875.6. (a) A licensee may request that his or her license be  
17 placed in a "retired" status at any time, provided the license has  
18 not been canceled, and any outstanding fines, cost recovery, and  
19 monthly probation monitoring costs are paid in full.

20 (b) An individual with retired status is not subject to any renewal  
21 or reporting requirements.

22 (c) Once an individual is placed on retired status, all privileges  
23 to practice polysomnography and polysomnography-related  
24 respiratory care services are rescinded. If an individual practices  
25 with a "retired" license, the individual shall be subject to discipline  
26 as prescribed by this chapter for the unlicensed practice of  
27 polysomnography and polysomnography-related respiratory care  
28 services.

29 3876. (a) Any person who submits to the board a check for  
30 fees that is returned unpaid shall pay all subsequent required fees  
31 by cashier's check or money order.

32 (b) Any person who submits to the board a check for fees that  
33 is returned unpaid shall be assessed an additional processing fee  
34 as determined by the board.

35 3877. Where an applicant is issued a license to practice  
36 polysomnography and polysomnography-related respiratory care  
37 services, and it is later discovered that all required fees have not  
38 been paid, approved continuing education is not reported or  
39 completed, employer information is not reported, or any other  
40 requirements as prescribed by this chapter are not met, the license

1 shall not be renewed or reinstated unless all past and current  
2 required fees have been paid and all requirements are met.

3 3878. Notwithstanding any other provision of law, the board  
4 may contract with a collection service for the purpose of collecting  
5 outstanding fees, fines, or cost recovery amounts, and may release  
6 personal information, including the birth date, telephone number,  
7 and social security number of any applicant or licensee for this  
8 purpose. The contractual agreement shall provide that the collection  
9 service shall not inappropriately use or release personal  
10 information, and shall provide safeguards to ensure that the  
11 information is protected from inappropriate disclosure. The  
12 contractual agreement shall hold the collection service liable for  
13 inappropriate use or disclosure of personal information.

14 3879. For purposes of license verification, a person may rely  
15 upon the licensing information as it is displayed on the board's  
16 Internet Web site that includes the issuance and expiration dates  
17 of any license issued by the board.

18 SEC. 2. No reimbursement is required by this act pursuant to  
19 Section 6 of Article XIII B of the California Constitution because  
20 the only costs that may be incurred by a local agency or school  
21 district will be incurred because this act creates a new crime or  
22 infraction, eliminates a crime or infraction, or changes the penalty  
23 for a crime or infraction, within the meaning of Section 17556 of  
24 the Government Code, or changes the definition of a crime within  
25 the meaning of Section 6 of Article XIII B of the California  
26 Constitution.